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4 IN THE UNITED STATES DISTRICT COURT  
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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7 MARY LABRADOR, individually and on ) Case No. 08-2270 SC  
8 behalf of all others similarly )  
9 situated, ) ORDER GRANTING FINAL  
10 Plaintiff, ) APPROVAL OF CLASS ACTION  
11 ) SETTLEMENT  
12 )  
13 v. )  
14 SEATTLE MORTGAGE COMPANY, )  
15 Defendant. )  
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16 Before the Court is Plaintiff Mary Labrador's Motion for Final  
17 Approval of Class Action Settlement, ECF No. 117 ("Mot. for Final  
18 Approval"), which Defendant Seattle Mortgage Bank ("SMC") supports,  
19 ECF Nos. 115, 116, 119. At the January 7, 2011 hearing on the  
20 motion, the Court continued the motion to March 4, 2011,  
21 instructing the parties to continue efforts to perfect notice on  
22 the 806 Class Members who had not yet received notice of the  
23 Settlement. ECF No. 118. In a January 14, 2011 order, the Court  
24 stated that it would grant final approval of the Settlement in  
25 advance of the March 4, 2011 hearing if the parties stipulated to  
26 an amended Settlement Agreement that protected the rights of these  
27 unnoticed Class Members. ECF No. 121. The parties have since  
28 filed a stipulation in which they state that 813 Class Members --

1 rather than 806 -- have not received notice of the Settlement, and  
2 they agree to undertake additional steps to provide notice to these  
3 Class Members. ECF No. 122. Specifically, the parties agree to  
4 withhold a portion of the Settlement for these unnoticed Class  
5 Members, send a new Notice of Settlement to these unnoticed Class  
6 Members, and provide them with additional time to opt out of or  
7 object to the Settlement. Id.

8 In light of this stipulation, and having reviewed the  
9 documents and good cause appearing, the Court GRANTS the Motion  
10 subject to the following conditions, and ORDERS, ADJUDGES, and  
11 DECREES as follows:

12 1. The Court has jurisdiction over the subject matter of  
13 this action and over all parties hereto, including the members of  
14 the Settlement Class.

15 2. The Court certifies the following Settlement Class:

16 All elders, meaning any individual who was 65  
17 years of age or older at the time his or her  
18 Home Equity Conversion Mortgage closed, who,  
19 prior to June 20, 2007, entered into a Home  
20 Equity Conversion Mortgage through a loan  
21 correspondent sponsored by SMC and whose claims  
22 are not time-barred. Excluded from the class  
23 is anyone whose Home Equity Conversion Mortgage  
24 was discharged through bankruptcy, or whose  
25 bankruptcy petition is pending as of the date  
26 the Settlement becomes final.

27 3. The Court previously certified a California-only class.  
28 ECF No. 97. In the order granting class certification, the Court  
found that the action satisfied the requirements of Rules 23(a) and  
(b)(3) of the Federal Rules of Civil Procedure. Id. The expanded  
Settlement Class likewise meets the requirements of Rule 23(a):

a. The Class includes about 11,638 individuals and is so  
numerous that joinder of all members is impracticable;

- 1       b. There are questions of law and fact common to the Class;
- 2       c. The claims of Representative Plaintiff Mary Labrador
- 3             ("Representative Plaintiff") are typical of the claims of
- 4             the Class; and
- 5       d. The Representative Plaintiff will fairly and adequately
- 6             protect the interests of the Class.

7       4. The Settlement Class also meets the requirements for

8 certification as a class under Rule 23(b)(3) of the Federal Rules

9 of Civil Procedure, in that questions of law and fact common to the

10 members of the Class predominate over any questions affecting only

11 individual members, and a class action is superior to other

12 available methods for the fair and efficient adjudication of this

13 controversy.

14       5. The Settlement Agreement was reached through arms-length,

15 adversary bargaining between the parties. There has been no

16 collusion between the parties in reaching the settlement.

17       6. Before entering into the settlement, the parties engaged

18 in sufficient investigation and discovery regarding the claims

19 Plaintiff alleged to allow counsel to act knowledgeably in

20 negotiating the settlement and to allow the Court to act

21 intelligently in weighing its fairness.

22       7. Mary Labrador is an adequate class representative and has

23 fulfilled her obligations to the Court and to the Class.

24       8. The Court appoints Mark A. Chavez and Nance F. Becker of

25 Chavez & Gertler LLP and Mark T. Johnson, Todd Schneider and

26 Garrett Wotkins of Schneider Wallace Cottrell Brayton Konecky LLP

27 as class counsel, finding that they have the experience and

28 qualifications necessary to represent the Class.

1           9. The Settlement Agreement executed by the parties provides  
2 substantial benefits to the Class Members in the form of monetary  
3 relief and protection against future harm. The Settlement provides  
4 for the establishment of a \$4 million Qualified Settlement Fund to  
5 be funded by payment from SMC's insurance policy with Colonial  
6 American. Mot. for Final Approval at 6-7. The Settlement  
7 Administrator estimates that the total cost for this project will  
8 be \$56,128. When all administrative costs and such attorneys'  
9 fees, costs, expenses, and service award as may be approved by the  
10 Court are paid, the balance of the Settlement Fund will be  
11 distributed to the Settlement Class Members in the same proportion  
12 that the origination fee imposed on each Class Member upon the  
13 closing of his or her loan bears to the total origination fees  
14 imposed on all members of the Class. Id. The parties estimate  
15 that Class Members will receive an average of \$370 under the  
16 settlement. Id.

17           10. With the exception of the 813 unnoticed Class Members,  
18 the members of the Settlement Class have been provided with  
19 adequate notice of the settlement terms. The notice given to the  
20 members of the Settlement Class adequately disclosed the terms and  
21 effect of the Settlement, including the requested attorneys' fee  
22 and service award, was the best notice practicable under the  
23 circumstances, and was reasonably calculated to communicate actual  
24 notice of the litigation and the proposed settlement to class  
25 members, and otherwise met the requirements of all applicable  
26 laws.<sup>1</sup>

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27  
28 <sup>1</sup> Because the parties admit that notice to the Class provided  
incorrect deadlines for Class Members to opt out and object, the

11. With the exception of the 813 unnoticed Class Members, class members were given an adequate opportunity to object to the terms of the settlement. No objections were received.

12. With the exception of the 813 unnoticed class members, class members were given an adequate opportunity to request to be excluded from the Settlement. Six members have elected to be excluded. The names and addresses of those members who have opted out of the settlement are set forth in Exhibit A hereto.

13. Based on the foregoing, the Settlement Agreement is hereby approved as fair, reasonable, and adequate.

14. The Representative Plaintiff and all members of the Settlement Class, except the individuals who elected to be excluded (identified in Exhibit A hereto) and the 813 unnoticed Class Members, hereby release any and all actual or potential claims, counterclaims, actions, causes of action, liabilities, damages (whether actual, nominal, punitive, exemplary, statutory, or otherwise), injunctive relief, costs, fees, attorneys' fees, or penalties of any kind, whether known or unknown, suspected or unsuspected, discovered or undiscovered, which arise in whole or in part from SMC's charging Home Equity Conversion Mortgage customers in California, Florida, Hawaii, Michigan, Minnesota, Missouri, New Jersey, Nevada, Ohio, Pennsylvania, Rhode Island and Washington Loan Origination Fees when (a) the Loan Origination Fee was conveyed, in whole or in part, to a loan correspondent or broker, and (b) the loan correspondent or broker was also paid a "correspondent," "broker" or "service release premium" fee by SMC.

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Court deems timely any elections to opt out that were postmarked by December 24, 2010 and any objections to the Settlement filed on or before December 31, 2010.

1 In addition to SMC, this release includes SMC's parent corporation  
2 Seattle Bank, its officers, directors, shareholders, employees,  
3 insurers, attorneys and assigns, and its successors (including any  
4 persons or entities that may acquire all or substantially all of  
5 its assets, stock or other ownership interests). Also released are  
6 any claims against Bank of America or any individual or entity  
7 affiliated therewith that arise, directly or indirectly, out of the  
8 Released Claims.

9 15. Defendant shall not, for a period of three years or such  
10 shorter time as Department of Housing and Urban Development  
11 regulation 24 CFR §206.31(a)(1) or its terms remain in effect,  
12 charge any homeowner a loan origination fee in connection with a  
13 Home Equity Conversion Mortgage loan when a correspondent fee is  
14 paid to the homeowner's mortgage broker in connection with the same  
15 Home Equity Conversion Mortgage loan. SMC shall also comply with  
16 all of its other obligations pursuant to the Settlement Agreement.  
17 The Court shall and hereby does retain jurisdiction over the  
18 interpretation, implementation, and enforcement of the Settlement  
19 Agreement, this Final Settlement Approval Order, and the Judgment.

20 16. This final approval of the Settlement is subject to the  
21 following conditions:

22 a. The third party administrator, Rust Consulting, shall  
23 withhold \$273,168, or such similar amount that can be  
24 calculated to reflect the amounts allocated to the 813  
25 unnoticed Class Members under the terms of the Settlement  
26 Agreement, from distribution to the Class Members who  
27 received the Notice;

28 b. Rust Consulting shall employ more extensive attempts to

1 provide notice to the 813 unnoticed Class Members, above  
2 and beyond the change-of-address procedure already  
3 utilized, and shall send a new notice of Settlement ("New  
4 Notice") to any new addresses it obtains;

5 c. The New Notice shall provide the unnoticed class members  
6 with an additional thirty-five days from date of mailing to  
7 opt out of the Settlement or to object to the Settlement or  
8 Class Counsel's Motion for Attorneys' Fees, and shall  
9 advise the unnoticed class members that the Court shall  
10 hold a hearing on the Settlement on March 4, 2011, at which  
11 any of the unnoticed class members who filed timely  
12 objections may appear and be heard. No less than seven  
13 days before the March 4, 2011 hearing, the parties shall  
14 submit a declaration from Rust Consulting detailing the  
15 additional steps taken to provide notice to the 813  
16 unnoticed Class Members, as well as the results of these  
17 additional steps;

18 d. This Order granting Final Approval of the Settlement is  
19 fully enforceable by the parties, and Defendant is hereby  
20 deemed immediately released by all Class Members of any  
21 liability to said Class Members pursuant to the terms of  
22 the Settlement, save and except for potential claims by the  
23 813 unnoticed Class Members. Any timely objections filed  
24 by any of the 813 unnoticed Class Members shall affect the  
25 813 unnoticed Class Members only, and shall not affect the  
26 validity or enforceability of the Settlement as to any of  
27 the other Class Members including, but not limited to, the  
28 release of Defendant by all other Class Members pursuant to

the terms of the Settlement;

e. The Court shall rule on March 4, 2011, or at such later date as the Court decides appropriate, the manner in which the funds allocated to the 813 unnoticed Class Members shall be distributed. Because the number of the 813 unnoticed Class Members who ultimately receive notice will affect the amount to be paid to all Class Members, no distributions shall be made to any Class Members until the Court makes this ruling. The Court also defers ruling on Plaintiff's Counsel's Motion for Attorneys' Fees, to provide the unnoticed Class Members with the opportunity to object to the motion.

IT IS SO ORDERED.

Dated: January 19, 2011

  
UNITED STATES DISTRICT JUDGE



COR #	Name of Submitter	Name 2 of Submitter	Address	City	State	Zip
6	NORMA HART		10454 DESCHUTES RD	PALO CEDRO	CA	96073
7	JAMES DUKE		375 MAXWELL AVE	OAKDALE	CA	95361
12	MARGUERITE FERREIRA		22391 SIOUX RD	APPLE VALLEY	CA	92308
24	ANA PEREZ		1727 GAMMA ST	NATIONAL CITY	CA	91950
25	JAMES & MARY BUTCHER		33287 AVE BICICLETA	TEMECULA	CA	92592
29	ANDREW BANKHEAD		237 SYCHAR RD	SAN DIEGO	CA	92114

EXHIBIT A